

NATIONAL INSTITUTES OF HEALTH
Meeting of the NIH Deputy Ethics Counselors and Ethics Coordinators
Minutes – January 4, 2005
1:45 to 3:00 pm

1. Update on New Regulation and Ethics Issues at NIH

Dr. Raynard Kington
NIH Deputy Director and Deputy Ethics Counselor

Dr. Kington gave an overview of the background issues and potential problems, and described the draft new regulation and its intent. A draft was submitted to the Department, who has final authority for determining what will be included. It is expected that the new regulation, being published as an "Interim Final Regulation," will be released early in February. By publishing it in the Federal Register as an Interim Final Regulation, it becomes effective the day of publication but still permits time for comments, which are then considered when the regulation is finalized. It is expected that the regulation will affect NIH employees in three areas: outside activities, awards from outside organizations, and financial holdings. The preamble of the draft indicates that the issues will be revisited in one year but there is no automatic sunset provision. A transition period following publication will permit time to adequately withdraw from outside activities and divest of prohibited holdings, including time to obtain a certificate of divestiture when needed. In addition, there is hope that the regulation will include some useable exceptions for unusual circumstances.

A process is being considered to determine penalties for those employees who engaged in unapproved outside activities, as follows: After review and investigation of each case, the NIH Deputy Director for Management will make a recommendation to Dr. Kington, who will then make the final decision. There will probably be an appeals process, where the employee may appeal the decision to Dr. Zerhouni or to the Office of the Secretary. A small number of cases may be referred to the Office of the Inspector General.

Following his talk, the following issues arose during the question and answer session:

- He was invited to attend the monthly NIH DEC/EC meeting, to permit more frequent communication with the NIH ethics community, and to permit the ethics community to become stronger partners with Dr. Kington in managing ethics issues across the NIH.
- Penalties for non-compliant employees, i.e., ones who refuse to attend training: It was suggested that the Institute/Center Deputy Ethics Counselor should work with the Human Resources staff and use the Table of Penalties to determine appropriate administrative action. Because each person may have other infractions, or other issues, there is no one mechanism or way to punish employees who do not comply with ethics requirements. ICs were encouraged to use judgment in completing training, i.e., aggressively pursue those with increased potential and conflict first. In addition, ICs can consider limiting administrative actions until the training is complete, e.g., no leave, travel, or outside activities will be approved.
- How to enforce the ban on certain financial holdings: Those who file a financial disclosure report, either public or confidential, will have to report their holdings. The remainder of the employees are on the 'honor system' to comply with the prohibitions. Focus of the discussion was on how to create an incentive or atmosphere 'to do the right thing.' In addition, it may be necessary to audit certain individuals if there is reasonable cause to suspect noncompliance. The Office of the General Counsel, Ethics Division, has audit authority and if they felt it was necessary, they could conduct an audit on any employee's holdings.

2. Draft Official Duty Activity Policy

Sheila Pohl

The draft Official Duty Activity (ODA) policy was distributed during the week of December 27th. Ethics staff were asked to review the draft policy and obtain input from employees as they deemed necessary or appropriate, on both the policy and new Official Duty Activity Request form (NIH 2809).

ACTION: Ethics staff will submit comments to Ms. Pohl by Friday, January 14, 2005.

3. Working Groups Update

Ms. Melvin encouraged attendees to consider being active in a working group. Interested persons can let her know which group in which they wish to participate.

- Training Group: The last meeting was to discuss plans for training ethics staff in 2005. Two courses are planned:
 1. The Introduction for Ethics Staff (Ethics 101) has been expanded and split into two courses, which will be offered in both the spring and fall of 2005. Additional courses can be scheduled if needed. The new course, Introduction to Ethics for Ethics Staff, is split into 101 and 102 to permit more in-depth coverage of the material and to enable attendees to not be away from their offices for too much time. Therefore, the course will be 4 days per week, for 2 weeks, approximately 3 weeks apart. It is expected that students attend both parts of the course, which will cover the same material as the recent Ethics 101 in the fall of 2004.

ACTION: To register, contact Fran Plyler at feplyler@cox.net.

2. EMIS Training: When EMIS version 2.0 is finished, the NIH Ethics Office will provide several classes on how to use EMIS. Classes will be taught probably in early April. More information will be available when the timeline for current revisions has been confirmed.
- Database Working Group: Members met with the staff from the NIH Center for Information Technology to continue to determine the scope of the project, so CIT can project costs. It would then take 18 to 24 months for CIT to build the new system, which will use the data and functions of EMIS and add to it. Ms. Jaffe and Ms. Melvin will meet with CIT staff and Dr. Kington later in January, at which time they will discuss budget and determine how the project will move forward, and authorize funds as necessary.

Discussion: The ethics community requested that minutes of the Working Groups be made available on the NIH Ethics Program web site.

ACTION: Ms. Melvin will work on that possibility.

3. For Good Fortune, Know Your Ethics

Barbara Fuller

In NHGRI, Barbara Fuller (NHGRI DEC) had a booth at the intramural employee retreat. The title of the booth was "For Good Fortune, Know Your Ethics." She had fortune cookies with ethics statements inside them. She had 10 statements in 500 cookies, and distributed them to attendees at the retreat.

Next Meeting: Tuesday, February 1, 2005
1:00 pm, Bldg 31, C-wing, Conference Room 10

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